LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.
FILED
SEP 13 1971
E. ROBERT SEAVER, CLERK

No. 71-203

In the Supreme Court of the United States

OCTOBER TERM, 1971

SATIRIS G. FASSOULIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
WILL WILSON,
Assistant Attorney General,
ROGER A. PAULEY,
EDWARD FENIG,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-203

SATIRIS G. FASSOULIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 1971. A petition for rehearing was denied on July 15, 1971. On August 10, 1971, the petition for a writ of certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether in this conspiracy and mail fraud case the evidence as to the use of the mails in New York, New York, was sufficient to establish venue in the Southern District of New York.

444-021—71

2. Whether the evidence as to use of the mails was sufficient.

3. Whether, where the indictment included among the overt acts of a conspiracy to commit mail fraud, mailings on which some of the substantive counts were based, the trial judge's post-verdict dismissal of those substantive counts required dismissal of the conspiracy count.

STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of conspiracy and twelve substantive mail fraud offenses, in violation of 18 U.S.C. 371, 1341. The trial court set aside the guilty verdict as to eight of the twelve substantive counts for lack of proof as to the use of the mails.[1] On August 25, 1970, petitioner was sentenced to concurrent prison terms of four and one-half years. The court of appeals affirmed (Pet. App. A).

The facts are comprehensively set forth in the opinion of the court of appeals. Briefly, in April and May, 1968, petitioner and two business associates controlled two companies, AIC Corporation (AIC) and Intercoastal Investors Company, Ltd. They arranged for their companies to obtain insurance policies on their lives from Community National Life Insurance (Community National).[2] Without paying the

[1] Convictions were left standing as to the conspiracy count (Count 1) and four substantive counts (Counts 5, 8, 12, 16) (Pet. App. A 6a).

[2] Two associates, Rafsky and Reifler, together with Ryan, the president of Community National, as well as the three

single premiums required to give the policies any cash surrender values, they obtained policies with stated cash surrender values of approximately $2.6 million. It was understood by the parties—but not stated in the policies—that the surrender rights could not be utilized unless and until the premiums were paid. Using these policies with their stated cash surrender values as collateral for loans, petitioner and his associates borrowed approximately $670,000 from various banks in the United States (Pet. App. A 3a–4a).

Petitioner's company, AIC, was located in New York City and petitioner represented that one of its vice-presidents was "Leonard Case," a prominent business executive (Pet. App. A 5a).

In June 1968 petitioner made a loan application on the strength of the Community National insurance policies to First Pennsylvania Bank and Trust Company, located in Philadelphia (Pet. App. A 7a, Pet. 7). Telephone and letter inquiries made by the bank to AIC concerning the desired loan were answered by petitioner, using the name of "Leonard Case" (Pet. App. A 8a–9a.) Four letters addressed to the bank in Philadelphia, which are the subject of the four substantive counts involved here, were dictated by petitioner in New York for the signature of "Leonard Case." The envelope for one of the letters (GX 198) bore the words "Special Delivery" and had a postage meter

---

companies involved, were named as co-defendants with petitioner. Only Community National and petitioner pleaded not guilty, with Community National's case being severed (Pet. App. A 2a–3a).

mark showing New York City as the place of mailing. The other three letters originated in AIC's New York office, but their envelopes were not retained by the bank. All four were received in Philadelphia by Dean, one of the bank's loan officers, who testified that they had arrived there as "mailings" (Pet. App. A 6a–7a, 9a).

ARGUMENT

1. Petitioner urges that venue in the Southern District of New York was not proved (Pet. 4–6). Venue in that district was proper if that was the district from which the letters moved. 18 U.S.C. 3237; see *Reed Enterprises* v. *Clark*, 278 F. Supp. 372, 376–377 (D. D.C.), affirmed, 390 U.S. 457; *Lord* v. *United States*, 412 F. 2d 499, 500–501 (C.A. 4). The evidence at trial and postal regulations pertaining to metered mail indicate that the mail moved from New York, New York, in the Southern District of New York. A secretary in AIC's New York office testified that she typed the letters (Pet. 4–5). The envelope for one of the letters (GX 198) bore a circular impression reading "New York, N.Y., June 18, '68" (Pet. 7, fn.). Such an impression indicates the post office of mailing (39 C.F.R. 144.3(c)(3)). Petitioner is mistaken in his suggestion (Pet. 5) that such mail can be mailed "quite conveniently in other districts close-by" such as Brooklyn, New York, or New Jersey communities. Metered mail may only be mailed from the post office shown in the meter stamp (39 C.F.R. 144.6(b)). Moreover, each of the remaining letters—as opposed to their envelopes which were not retained—showed AIC's New York office as the mailer's

address. Accordingly, the jury could properly conclude that the letters here involved were mailed in the Southern District of New York. See *Dunlop* v. *United States*, 165 U.S. 486, 494–495; *Headley* v. *United States*, 294 Fed. 888, 890 (C.A. 5).[3]

2. Petitioner contends that the proof was insufficient to show that the mails were utilized at all in furtherance of the scheme (Pet. 5, 7–9). The references to "Special Delivery" and the metered mail marking, however, are strongly indicative of a mailing in New York and thus corroborative of Dean's testimony that all four letters were received in Philadelphia as "mailings." It is unreasonable to suggest, as petitioner does, that after paying for metered postage (39 CFR 144.3(b)), AIC may have shipped a letter by any one of several presently suggested "other methods" (see Pet. 5, fn.). The evidence presented by the government thus permitted the jury to find that the mails were utilized. No direct evidence by an employee of AIC that she recalled mailing the letters was required. See *Smith* v. *United States*, 343 F. 2d 539, 543–544 (C.A. 5), certiorari denied, 382 U.S. 861; *United States* v. *Leathers*, 135 F. 2d 507, 510 (C.A. 2).

[3] Neither *Travis* v. *United States*, 364 U.S. 631, nor *Serio* v. *United States*, 377 F. 2d 936, 939 (C.A. D.C.), upon which petitioner relies (Pet. 6), involved mail fraud offenses and both are distinguishable on their facts. In *Travis*, the crime charged had a defined locus, one different from where prosecution was instituted. In *Serio*, venue was alleged to be in one district but evidence was introduced which tended to show that the crime of altering money orders had been committed in another district.

3. The jury convicted petitioner on all counts submitted to it. After verdict, the court set aside the verdicts as to four substantive counts (Counts 4, 6, 10, 15) in which mailings were charged which had also been the basis for two of the ten overt acts alleged under the conspiracy count (Pet. App. A 10a). Petitioner contends that his conspiracy conviction must also be set aside under the doctrine of collateral estoppel (Pet. 9–12).

Whether or not the trial court's ruling as to the dismissed substantive counts was dispositive as to two of the ten overt acts, the validity of the conspiracy conviction is unaffected. The government's proof as to other of the overt acts was ample and uncontradicted. Proof of those overt acts was sufficient to sustain the conspiracy conviction, *United States* v. *Bletterman*, 279 F. 2d 320 (C.A. 2).[4] Moreover, as the court below observed (Pet. App. 12a), the jury returned guilty verdicts on Counts 5, 8, 12 and 16, which were sustained by the trial judge. The convictions involved overt acts clearly done in furtherance of the conspiracy alleged in Count 1. Such overt acts are sufficient to sustain a conspiracy conviction even if they are not alleged as such in the indictment. *United States* v. *Armone*, 363 F. 2d 385, 400 (C.A. 2), certiorari denied, 385 U.S. 957; *United States* v. *Negro*, 164 F. 2d 168 (C.A. 2); *Reese* v. *United States*, 353 F. 2d 732, 734 (C.A. 5); *Brulay* v.

[4] See, *e.g.*, Appellant's Appendix in the Court of Appeals for the Second Circuit 445a–446a; 464a; 391a–402a; GX 122–A; GX 174.

United States, 383 F. 2d 345, 350–351 (C.A. 9), certiorari denied, 389 U.S. 986. Thus, as the court of appeals found, any error in submission of unproven overt acts to the jury was harmless beyond a reasonable doubt. See *Chapman v. California*, 386 U.S. 18.

In addition, even if there be deemed a failure of proof on the conspiracy count, the sentence imposed is fully supportable under the substantive counts and application of the concurrent sentence doctrine as a rule of "judicial convenience" would be appropriate. *Benton* v. *Maryland*, 395 U.S. 784, 792; *United States* v. *Barsaloux*, 419 F. 2d 1299 (C.A. 5), certiorari denied, 397 U.S. 972.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

ROGER A. PAULEY,
EDWARD FENIG,
Attorneys.

SEPTEMBER 1971.

U.S. GOVERNMENT PRINTING OFFICE: 1971